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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/620,742	07/16/2003	Joseph L. Sullivan	1023-130US01	8969
28863	7590	08/28/2006	EXAMINER	
SHUMAKER & SIEFFERT, P. A. 8425 SEASONS PARKWAY SUITE 105 ST. PAUL, MN 55125			MULLEN, KRISTEN DROESCH	
			ART UNIT	PAPER NUMBER
			3766	

DATE MAILED: 08/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/620,742

Applicant(s)

SULLIVAN ET AL.

Examiner

Kristen Mullen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 June 2006 (Response).
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-82 is/are pending in the application.
- 4a) Of the above claim(s) 25-38, 52-57, 65, 66, 81 and 82 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 5, 8-10, 12, 13, 18, 22, 24, 39, 40, 45-47, 60, 62, 63, 67, 69-75, 77, 78 and 80 is/are rejected.
- 7) ☒ Claim(s) 3, 4, 6, 7, 11, 14-17, 19-21, 23, 41-44, 47-51, 59, 61, 64, 68, 76 and 79 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 11 separate IDS's.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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DETAILED ACTION

Election/Restrictions

1. Claims 25-38, 52-57, 65-66 and 81-82 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 6/1/06

Information Disclosure Statement

2. The information disclosure statements do not appear to comply with the guidelines set forth in MPEP 2004 regarding both the number of references cited and the elimination of clearly irrelevant art and marginally cumulative information. However, compliance with these guidelines is not mandatory. Furthermore, 37 CFR 1.97 and 1.98 do not require that the information be material; rather, they allow for submission of information regardless of its pertinence to the claimed invention. Also, there is no requirement to explain the materiality of the submitted references.

2. However, burying of a clearly relevant reference in a long list of citations may not comply with applicant's duty of disclosure. Applicant is advised that the MPEP states the following with respect to large information disclosure statements:

Although a concise explanation of the relevance of information is not required for English language information, applicants are encouraged to provide a concise explanation of why the English-language information is being submitted. Concise explanations (especially those that point out the relevant pages and lines) are helpful to the Office, particularly where documents are lengthy and complex and applicant is aware of a section that is highly relevant to patentability or where a large number of documents are submitted and applicant is aware that one or more is highly relevant to patentability. MPEP § 609.04(a)(III).

This statement is in accord with dicta from *Molins PLC v. Textron, Inc.*, 48 F.3d 1172 (Fed. Cir. 1995), stating that forcing the Examiner to find "a needle in a haystack" is "probative of bad

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faith.” *Id.* at 1888. This case presented a situation where the disclosure was in excess of 700 pages and contained more than fifty references. *Id.* 1888.

3. The MPEP provides more support for this position. In a subsection entitled “Aids to Compliance With Duty of Disclosure,” item thirteen states:

It is desirable to avoid the submission of long lists of documents if it can be avoided. Eliminate clearly irrelevant information and marginally pertinent cumulative information. If a long list is submitted, highlight those documents which have been specifically brought to Applicant’s attention and/or are known to be of the most significance. See Penn Yan Boats, Inc. v. Sea Lark Boats, Inc., 359 F.Supp 948 (S.D. Fla. 1972) aff’d 479 F.2d 1338 (5th Cir 1974). MPEP § 2004.

4. Therefore, it is recommended that if any information that has been cited by applicants in the above referenced information disclosure statements is known to be material for patentability as defined by 37 CFR 1.56, Applicant should present a concise statement as to the relevance of that/those particular documents therein cited.

Specification

3. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

The following title is suggested: INTERACTIVE FIRST AID DEFIBRILLATION.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this

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subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-2, 5, 9-10 and 39-40 are rejected under 35 U.S.C. 102(b) as being anticipated by University of Medicine and Dentistry of New Jersey (hereinafter UMDNJ) (WO 96/19774)

Regarding claims 1 and 39, UMDNJ shows a method and computer readable medium with instructions for displaying a diagram representing at least a portion of a human body (Figs. 1-8) receiving a selection of a part of the displayed human body and presenting first aid information as a function of the selection (Page 9, lines 4-14; page 13, lines 4-27; page 28, lines 5-11).

With respect to claim 2 and 40, UMDNJ shows the portion of the human body is a first portion, the method further comprising displaying a second portion of the human body as a function of the selection, in which the second portion depicts a more specific region of the body than the first portion (Figs. 1-9).

With respect to claim 5, UMDNJ shows delivering a therapy to a patient as a function of the selection (page 28, line 5-Page 30, line 21).

Regarding claim 9, UMDNJ shows presenting an acknowledgement of the selected part (highlighting of selected part) (Figs. 1-8).

With respect to claim 10, UMDNJ shows the first aid information comprises an instruction that directs an application of a first aid technique (page 28, line 5-Page 30, line 21).

6. Claims 12-13, 18, 22, 24 and 45-46 are rejected under 35 U.S.C. 102(b) as being anticipated by Battaglia (5,088,037).

Regarding claims 12 and 45, Battaglia shows a method and computer readable medium comprising instructions for causing a programmable processor to present a menu of patient

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conditions (43-47, 18-22), receive a selection from the menu, and present first aid information as a function of the selection (Figs. 2-3; Col. 3, line 11-Col. 4, line 53).

With respect to claims 13 and 46, Battaglia further shows first status information (38, 39, 40) and receiving second patient status information (43-47, 18-22), from an input device; and presenting the first aid information as a function of the second patient status information (Figs. 2-3; Col. 3, line 11-Col. 4, line 53).

Regarding claim 18, Battaglia further shows delivering a therapy as a function of the selection.

Regarding claims 22 and 24, Battaglia shows an instruction that directs application of a first aid technique or recommending a course of action (48, 49).

7. Claims 58, 60, 62 and 63 are rejected under 35 U.S.C. 102(b) as being anticipated by Kramer (5,405,362).

Regarding claims 58 and 62, Kramer shows a method and computer readable medium for requesting first patient status information associated with a patient (300, 310, 315), receiving the first patient status information; storing in memory the received first patient status information associated with the patient; receiving second patient status information (360) and presenting first aid information as a function of the first and second patient status information (Figs. 18A-I).

Regarding claims 60 and 63, Kramer shows presenting a menu of patient conditions (810), in which receiving second patient status information comprises receiving a selection from the menu (fig. 18F).

8. Claims 67 and 69-74 are rejected under 35 U.S.C. 102(b) as being anticipated by Freeman (2001/0047140).

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Regarding claim 67, Freeman shows a method comprising receiving first patient status information from a first sensor (step 122c), receiving second patient status information from a second sensor (step 124), and presenting the first aid information as a function of the first and second patient status information (step 126) (Figs. 7B, 7C).

With respect to claims 69 and 74, Freeman further shows the first sensor is an oxygen sensor (pulse oximeter).

Regarding claim 70, Freeman shows a system comprising a first sensor (70, 72, 74), a second sensor (12, 14) and at least one output device (Figs. 2, 5).

With respect to claim 71, Freeman shows the output device is a one an LCD display, an LED display, OLED display, a CRT display, an electroluminescent display, a plasma display, and a synthetic speech module (Fig. 2; paragraphs [0037-0039]).

Regarding claim 72, Freeman shows further shows a compartment (Fig. 4, where internal components are located).

With respect to claim 73, Freeman further shows an input device (12, 14, 70, 72, 74).

The functional language and statements of intended use have been carefully considered but are not considered to impart any further structural limitations over the prior art. Examples of statements of intended use are:

- “to receive first patient status information”
- “to receive second patient status information”
- “to present first aid information as a function of the first patient status information and the second patient status information”
- “to hold a first aid supply”

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- “to receive patient status information”

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9. Claims 75, 77-78 and 80 are rejected under 35 U.S.C. 102(e) as being anticipated by Chapman et al. (2004/0249419).

The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Regarding claims 75 and 78, Chapman shows a method and computer readable medium for receiving an identification of a patient (70); retrieving from memory patient status information associated with the identified patient (74); and presenting first aid information as a function of the patient status information (80)(Fig. 5).

With respect to claims 77 and 80, Chapman shows receiving the identification of the patient comprises receiving a signal from a sensor (26)(Paragraph [0043]).

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over University of Medicine and Dentistry of New Jersey (hereinafter UMDNJ) (WO 96/19774). UMDNJ is as explained before. Although UMDNJ fails to show receiving a selection comprises sensing

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contact on a touch screen, it is well known in the art to utilize touch screens. Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to modify the method of UMDNJ to include sensing contact on a touch screen since the use of touch screens is well known in the art.

Allowable Subject Matter

12. Claims 3, 4, 6, 7, 11, 14-17, 19-21, 23, 41-44, 47-51, 59, 61, 64, 68, 76 and 79 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kristen Mullen whose telephone number is (571) 272-4944. The examiner can normally be reached on M-F, 10:30 am-6:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert E. Pezzuto can be reached on (571) 272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Kristen Mullen
Patent Examiner
Art Unit 3766



kdm